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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1994

Addendum

LIBYAN ARAB JAMAHIRIYA*

[30 June 1994]

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. THE LEGAL FRAMEWORK FOR THE APPLICATION OF THE PROVISIONS OF THE CONVENTION IN ACCORDANCE WITH THE LIBYAN LEGISLATION IN FORCE	5 - 24	4

* The initial and the additional reports submitted by the Government of the Libyan Arab Jamahiriya are contained in documents CAT/C/9/Add.7 and Add.12/Rev.1, respectively. For their consideration by the Committee, see documents CAT/C/SR.93, 130, 135 and 135/Add.2, and Official Records of the General Assembly, forty-seventh and forty-eighth sessions (A/47/44, paras. 148-159 and A/48/44, paras. 181-207).

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CONTENTS (continued)

		Paragraphs	Page
A.	The status of international conventions *vis-à-vis* domestic legislation . . .	6 - 12	4
B.	The structure of the Convention . . .	13 - 24	5
II.	REVIEW OF THE PROVISIONS OF THE CONVENTION AND THE CORRESPONDING PROVISIONS OF LIBYAN LEGISLATION	25 - 79	7
Conclusion		80 - 86	19

Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment places the Jamahiriya, like other States parties to that Convention, under an obligation to submit a periodic report on the measures they have taken to give effect to the provisions of that Convention. This obligation by States parties helps the Committee not only to ascertain whether national legislation is consistent with the provisions of the Convention but also to rectify any shortcoming or defect that might be found in this regard.

2. The Jamahiriya announced its accession to the Convention on 25 April 1989 and submitted a report on 12 April 1991 concerning the measures that it had taken at the national level to apply the provisions of that Convention. It subsequently submitted a verbal report on 14 November 1991.

3. Details of these practical steps were then incorporated in a supplementary 40-page written report to which the relevant national legislative texts were annexed. Your distinguished Committee discussed that report, on which it expressed the following views:

(a) The Committee thanked the Jamahiriya for submitting the supplementary report on the measures that it had taken.

(b) The Committee thanked the head and members of the delegation of the Jamahiriya for the efforts that they had made to reply to more than 70 questions concerning the Libyan political and judicial systems, the organization of the courts, the procedures for investigations, arrests and searches, preventive measures, extradition, the status of international conventions vis-à-vis national legislation and the mechanism for their ratification, etc.

(c) The Committee expressed its view that, on the whole, the Libyan judicial system was not inconsistent with the provisions of the Convention against Torture, for the application of which it constituted a relevant framework.

4. In conclusion, the Committee said that the next periodic report submitted by the Jamahiriya should contain a textual comparison between the individual provisions of the Convention and those of Libyan legislation. That will be done in the present supplementary report. In our opinion, the previous report contained an adequate study of the Libyan legislative provisions and compared them with those of the Convention against Torture. Nevertheless, in the present report we will endeavour to respond to the distinguished Committee's request within the following framework: the status of international conventions vis-à-vis national or domestic legislation and the effects thereof; the legal structure of the Convention against Torture, which will be divided into provisions that place the State party under a number of specific practical obligations, and general procedural provisions; a review of the provisions of the Convention and their comparison with the corresponding provisions of Libyan legislation.

I. The legal framework for the application of the provisions of the Convention in accordance with the Libyan legislation in force

5. This question is governed by the status of international conventions vis-à-vis national legislation in the Jamahiriya and also by the existence of national legislative texts that are consistent with the provisions of the Convention against Torture.

A. The status of international conventions vis-à-vis domestic legislation

6. Every international convention which the Jamahiriya concludes, to which it accedes and which is ratified by the basic people's congresses and published in the Official Gazette becomes binding and must be put into effect since it is equivalent to domestic legislation that is binding on the national judiciary from the time of its publication in the Official Gazette.

7. In accordance with this principle, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are binding on the national judiciary and any party concerned has the right to invoke it and petition the Libyan courts to implement its provisions. The courts are under an obligation to respond to such a petition provided that the petition submitted to them is substantiated by a legal text and that the party submitting it has an interest therein. This applies to all levels of courts.

8. Although there is no inconsistency between the provisions of the Convention in question and Libyan legislation, consisting in the Penal Code, the Code of Criminal Procedure, the Civil Code and the Promotion of Freedom Act, any provision contained in the Convention but to which no reference is made in a Libyan legislative enactment is binding on the national courts, as already mentioned.

9. The relationship between the Convention against Torture and the national legal system in the Jamahiriya is governed by the following principles:

(a) Every international convention which the Jamahiriya concludes or to which it accedes must be put into effect, after ratification and publication in the Official Gazette, as part of the domestic legislation.

(b) Any provision of the Convention forming the subject of this report, or any other convention, for which there is no corresponding or equivalent legal provision in Libyan law must be put into effect and is binding on the national judiciary.

(c) Any party concerned has the right to invoke the provisions of the Convention, in whole or in part, before the national courts, which have an obligation to respond to such a petition in accordance with the rules of jurisdiction and within the framework of the discretionary power legally vested in them. This is a general principle recognized by all judicial systems throughout the world concerning the jurisdiction and discretionary

power vested in the judiciary. This principle applies, in particular, to human rights instruments. Accordingly, international conventions become binding and enforceable without any need to incorporate their provisions or texts in similar domestic legislation.

10. In our opinion, it is essential to incorporate the provisions of the Convention against Torture in the domestic legislation of States whenever such legislation takes precedence over the provisions of international conventions in regard to binding force and applicability before the national courts. However, this is not the case in view of the attitude adopted by the Libyan legislature.

11. The principles to which we have already referred are derived from the direct effects of the status of international conventions vis-à-vis domestic legislation in Libya. This is the first aspect, which defines the legal framework for the application of the provisions of the Convention against Torture in the Jamahiriya.

12. The second aspect relates to the existence of domestic legislation that is consistent with the provisions of the Convention against Torture, as we will see in the various sections of this report concerning the Penal Code, the Code of Criminal Procedure, the Civil Code and the Promotion of Freedom Act, etc.

B. The structure of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

13. The legal structure of the Convention against Torture consists of a preamble and 33 articles, all of which are binding on the States parties thereto. These provisions are divided into: a number of articles that place the State party under specific practical obligations; and a number of provisions concerning general procedures. In other words, the Convention contains both operative and procedural provisions, but they are also mutually complementary in regard to binding force and the requirement that they be implemented by every State which accedes to the Convention in question.

1. The provisions of the Convention (Part I) that place the States parties under practical obligations (the operative provisions)

14. Articles 1 to 16 of the Convention all include provisions through which the Convention places States parties under a number of practical obligations.

15. For example, article 1 defines torture as any act by which severe pain or suffering, whether physical or mental, is inflicted. It emphasizes the intentional nature of such acts that cause pain and also defines the objective or purpose underlying the commission of acts of torture. Article 2, paragraph 1, obliges States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. Paragraph 3 of the same article stipulates that a State party to the Convention may not invoke any exceptional

circumstances, such as a state of war or a threat of war or political instability, etc., as a justification of torture. Paragraph 3 further stipulates that an order from a superior officer or a public authority may not be invoked as a justification of torture.

16. Article 3, paragraph 1, prohibits the expulsion, return or extradition of a person to another State if the State in the territory of which he is living has substantial grounds for believing that he would be in danger of being subjected to torture. Paragraph 2 of the same article prohibits extradition if the said substantial grounds relate to the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

17. Article 4, paragraphs 1 and 2, place each State party to the Convention under an obligation to ensure that all acts of torture are offences under its criminal law and are punishable by appropriate penalties which take into account their grave nature.

18. Article 8, paragraphs 1, 2, 3 and 4, speak of extradition for the offences referred to in the above-mentioned article 4. They lay down the conditions for extradition and, in that connection, refer to any relevant treaties between the States concerned. In the absence of such a treaty, the Convention against Torture stipulates that the question of extradition should be governed by the legislation of the State to which the request for extradition is submitted. The Convention may also be considered as the legal basis for extradition.

19. In this way, the provisions of articles 1 to 16 place the State party under a number of practical obligations. It must incorporate them in its national legislative and judicial systems and take effective administrative and judicial measures to further the application of the provisions of the Convention and remove any obstacle impeding the implementation of its stipulations.

20. These articles together constitute the basis on which States parties are obliged to respect the provisions of the Convention, incorporate its provisions in their legislation or consider the Convention as a domestic legislative enactment that must be applied by the national courts and judiciary in accordance with the procedures that the State party follows to vest international conventions with the force of law in its national legal system.

2. Part II of the Convention (procedural provisions)

21. Article 17 of the Convention against Torture contains provisions concerning the procedures for the establishment of the Committee, its designation, the number of its members, the manner in which they should be elected and the duration of their membership, etc.

22. Article 19 speaks of the obligation of States parties to submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under this Convention. It then

speaks of the Committee's work in this field. A set of practical provisions of special importance is contained in article 21, paragraphs (a), (b), (c), (d), (e), (f), (g) and (h).

23. In our view, it is Part I of the Convention, comprising articles 1 to 16, on which the comparison between its provisions and those of the domestic legislation of States parties should be based, since it is the provisions of Part I which, in general, contain the practical obligations with which every State party must comply in its domestic legislation and apply in its national courts.

24. Concentration on the articles in Part I of the Convention does not imply fragmentation of the Convention or undervaluation of its binding effect. In the introduction to this report, we indicated that all the provisions of the Convention, including its preamble, are binding on the State party. This is a firmly-established principle in such cases. However, our purpose in making such a division is to achieve a practical benefit and prove, as we will see, that an actual comparison between the provisions of the Convention and Libyan legislation shows that they are being fully applied, for two reasons.

(a) In practice, there is ample scope for the application of the provisions of the articles of the Convention for which there are similar corresponding articles and texts in Libyan legislation. Any gap that might be found in domestic law or legislation is filled by the provisions of the Convention, which is binding on the national courts, and any interested party has the right to invoke or demand the enforcement of its provisions at any level of those courts.

(b) The Convention against Torture became part of Libya's domestic legislation as soon as it was ratified and published in the Official Gazette. It thereby acquired binding force like any other domestic legislative enactment, as we mentioned at the beginning of this report when speaking of the general legal framework for the application of the provisions of the Convention against Torture in Libya.

II. Review of the provisions of the Convention and the corresponding provisions of Libyan legislation

Article 1

25. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession ... etc. The corresponding articles in Libyan legislation are as follows:

Article 435 of the Penal Code

26. This article states: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment".

Article 17 of the Promotion of Freedom Act

27. This article specifies: "The accused is deemed to be innocent until proved guilty by a court judgement. It is prohibited to subject the accused to any form of physical or mental torture or other cruel, inhuman or degrading treatment".

28. On comparing article 1 of the Convention with the text of article 435 of the Penal Code and article 17 of the Promotion of Freedom Act, we find that the two above-mentioned Libyan legislative texts cover the requirements of article 1 of the Convention. Moreover, article 17 of the Promotion of Freedom Act also covers the requirements of article 16 of the Convention in the field concerned.

29. Although Libyan law prescribes a penalty for an act of torture without defining that act, as in the case of article 435 of the Penal Code, article 17 of the Promotion of Freedom Act defines the nature of torture in the same terms as those embodied in article 1 of the Convention. Furthermore, following its ratification by the people's congresses in the Jamahiriya and its publication in the Official Gazette, the Convention against Torture became a domestic legislative enactment the provisions of which are binding on the national courts in all matters not covered by the provisions of domestic legislation. Any person who has a legal interest has the right to invoke the provisions of the Convention and, if necessary, point out the need for their application as part of domestic legislation.

Article 2

30. Article 2 specifies that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. With regard to legislative measures, the corresponding Libyan legislative texts are as follows.

Article 435 of the Penal Code

31. Reference has already been made to this article.

Article 431 of the Penal Code

32. This article stipulates as follows:

> "Any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain shall be liable to a penalty of imprisonment and a fine of up to 250 dinars".

This provision applies to the abuse of authority against any person.

Article 17 of the Promotion of Freedom Act

33. Reference has already been made to this article in connection with article 1 of the Convention.

34. We once again wish to point out that any gap in domestic legislation is covered by the Convention, which has become part of domestic legislation and is therefore enforceable and binding on the national courts. The same applies to article 2, paragraphs 2 and 3, of the Convention, as indicated in paragraph 4 below.

Article 3

35. The corresponding text is found in article 9 of the Libyan Penal Code, which places the following restrictions on extradition:

(a) The act on which the extradition request is based must constitute a crime under Libyan law and under the law of the State requesting extradition.

(b) The crime or penalty must not be statute-barred under the Libyan or foreign laws.

(c) The laws of the two States must permit criminal prosecution.

The cases in which Libyan law does not permit extradition are as follows:

(a) A request for the extradition of a Libyan citizen.

(b) The crime in respect of which extradition is requested must not be a political or politically motivated crime.

(c) Article 9 of the Libyan Penal Code defines a political crime, under the criminal law, as any crime prejudicial to a political interest of the State or a political right of any individual.

Article 21 of the Promotion of Freedom Act

36. This article stipulates that the Jamahiriya is a place of refuge for persecuted persons and freedom-fighters. Accordingly, such refugees who have sought its protection cannot be handed over to any other authority.

37. Article 3, paragraphs 1 and 2, of the Convention against Torture are fully covered by article 9, paragraph 5, of the Penal Code and article 21 of the Promotion of Freedom Act. Expulsion, return ("refoulement") or extradition as referred to in article 3 of the Convention are prohibited by law in cases involving the political rights of individuals or in circumstances in which their human rights might be violated.

Article 4

38. This article of the Convention has its counterpart in article 435 of the Penal Code: "Any public official who personally tortures or orders

the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment". The text of this article of the Libyan Penal Code designates acts of torture as criminal offences regardless of whether the public official commits them himself or orders others to do so and the penalty of imprisonment, depending on the gravity of the act, ranges from 3 to 10 years.

39. Article 435 is further strengthened by the text of article 431, under which any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain is liable to a penalty of imprisonment and a fine.

40. Under these two provisions, acts of torture are regarded as acts of violence against any person in such a way as to detract from his dignity or cause him physical pain. They are designated as criminal offences punishable by law, as required by article 4 of the Convention.

Article 5

41. Under article 4 of the Penal Code, the offences referred to in article 4 of the Convention and article 5, paragraphs (a), (b) and (c), of the Code are designated as punishable offences which fall under the jurisdiction of the Libyan courts, regardless of whether they are committed in territory subject to that jurisdiction or in places that are regarded as equivalent to Libyan territory (offences committed on Libyan ships or aircraft, for example), and regardless of whether the offences are committed by a Libyan or a foreign national.

42. Reference has already been made to the question of extradition, which is regulated by article 9, paragraph 5, of the Libyan Penal Code and article 21 of the Promotion of Freedom Act.

43. In all cases, any gap in the Libyan text corresponding to a provision of the Convention against Torture can be filled by the stipulations contained in the Convention, which is regarded as a domestic legislative enactment that is binding on the national courts, as already indicated on more than one occasion. In our view, the provisions of Libyan domestic legislation meet the requirements of the Convention as set forth in article 5 and other articles thereof. For further details, reference can be made to the supplementary report submitted in November 1992, to which all the Libyan legislation relevant to the Convention was annexed.

Article 6

44. The provisions of article 6 of the Convention have their counterpart in article 4 of the Libyan Penal Code. The situation can be defined as follows:

(a) Upon being satisfied, after an examination of information available, that a person residing in Libyan territory has committed any of the acts designated as criminal offences in article 4 of the Convention, the

Libyan authorities take him into custody in accordance with the requirements laid down in article 6 concerning the adoption of legal measures and the duration of custody.

(b) Article 4 of the Libyan Penal Code is fully applicable to both Libyan and foreign citizens residing in Libyan territory.

(c) The text of article 4 of the Libyan Penal Code allows no scope for the Libyan State to choose whether to exercise or waive its judicial jurisdiction, since the provisions of the Libyan Penal Code must be applied to both Libyan and foreign citizens and the State party, namely Libya, has an obligation to exercise its judicial jurisdiction. However, there is nothing to prevent the State from invoking the provisions of article 6, paragraph 4, of the Convention, which has become part of its domestic legislation, concerning indication by the State party as to whether it intends to exercise this jurisdiction.

(d) Extradition is governed by the provisions of articles 8 and 9 of the Penal Code and article 21 of the Promotion of Freedom Act, as already mentioned.

Article 7

45. This provision of the Convention has its counterpart in the texts of articles 4, 435 and 431 of the Libyan Penal Code, as explained below:

(a) Article 4 stipulates that the Penal Code and the Code of Criminal Procedure apply to any Libyan or foreign national who commits, in Libyan territory, any legally proscribed offences. Libyan territory is deemed to include Libyan aircraft and ships, wherever they may be, unless they are subject to foreign legal jurisdiction under the terms of international law.

(b) Article 435 of the Penal Code stipulates that any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment.

(c) Article 431 of the Penal Code stipulates that any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain is liable to a penalty of imprisonment and a fine of up to 250 dinars.

46. A comparison of these texts with the provisions of article 7 of the Convention, read in conjunction with articles 4 and 5 thereof, enables us to draw the following conclusions:

(i) The legal jurisdiction of the Libyan Penal Code covers any act constituting an offence committed in Libyan territory, regardless of whether its perpetrator is a Libyan or a foreign national. Libyan

territory is deemed to include Libyan aircraft and ships, wherever they may be, except in the hypothetical cases of dispute referred to in the article in question, in accordance with the general rules of jurisdiction.

(ii) In the eyes of the law, acts of torture are criminal offences and, under the terms of article 435 of the Penal Code, torture constitutes a felony punishable by a minimum of 3 and a maximum of 10 years' imprisonment, depending on the gravity of the act. This is in conformity with the requirements of article 4 of the Convention.

(iii) Under article 431 of the Penal Code, it is a punishable offence for a public official, in the exercise of his duty, to use violence against a person in such a way as to dishonour him or cause him physical pain. An additional penalty is prescribed to punish acts of violence as such.

(iv) As already mentioned, the provisions of the Convention against Torture became part of Libyan domestic legislation as soon as they were ratified and published in the Official Gazette.

(v) Fair treatment is guaranteed by articles 24 to 26 of the Code of Criminal Procedure, concerning the circumstances in which arrests can be made and statements taken from arrested suspects. These provisions are supplemented by article 30 of the same Code, concerning the legality of arrests, and article 31, concerning detention and places of custody.

47. In accordance with those overall provisions, the Libyan authorities (the State), as a party to the Convention against Torture and in keeping with the provisions of Libyan legislation, are under an obligation, like other States parties, to take the measures required by article 7 of the Convention. Obviously, the criteria governing the evidence required for prosecution and conviction must under no circumstances be less strict than those applied in the cases referred to in article 5, paragraph 1.

Article 8

48. The corresponding provisions are found in articles 8 and 9 of the Libyan Penal Code.

49. Article 8 of that Code stipulates that:

"The extradition and return of criminals shall be governed by Libyan law unless regulated by treaties and international practice".

50. Under article 9 of the same Code:

"Criminals may be extradited provided that the following conditions are met:

(a) the act on which the extradition request is based must constitute an offence under Libyan law and under the law of the State requesting the extradition.

(b) The crime or penalty must not be statute-barred under the Libyan or foreign laws".

51. This leads to the following conclusions:

(a) The extradition and return of criminals are governed by Libyan law. This is only natural, since it forms part of the sovereignty of national legislation.

(b) Libyan law does not apply to cases covered by international treaties concerning extradition and return which the Libyan State has concluded with one or more other States, nor does it apply to cases governed by international practice.

(c) Under Libyan law, for extradition to be permissible, the act on which the extradition request is based must constitute an offence under Libyan law and also under the law of the State requesting the extradition.

(d) The crime or the penalty that it entails must not be statute-barred under either of the two laws.

(e) If extradition is governed by an international treaty between the Jamahiriya and one or more other States, the offences referred to in article 4 are covered thereby. With all the more reason, these offences shall be designated as extraditable in any future treaty concluded by Libya. (Art. 8, para. 1, of the Convention.)

(f) In accordance with article 8, paragraph 2, of the Convention, the conditions stipulated in Libyan law must be applied in the event of Libya receiving a request for extradition from another State. These conditions are laid down in the above-mentioned paragraphs 1 and 2 of article 9 of the Libyan Penal Code.

(g) The Convention against Torture has become part of the domestic legislation in force in Libya and the extradition procedures should be put into effect between two States parties to the Convention. In our view, this

facilitates matters in that regard, since every State party is assumed to have taken the legislative measures needed to facilitate the application of the Convention in question, including the cases referred to in article 8 thereof which governs the conditions and scope of extradition.

Article 9

52. The corresponding provisions of Libyan legislation, deal with the competence of the national courts to hear the cases referred to in the provisions of articles 5, 6, 8 and 9 of the Convention. Confining our comments to article 9 of the Convention, since articles 5, 6, and 8 have already been dealt with, we can state as follows:

53. With regard to the jurisdiction of the national courts, article 9 presupposes that there is a person alleged to have committed an act constituting an offence under the terms of article 4 of the Convention and that the said person has been subjected to the procedures for dealing with his case in accordance with the conditions and circumstances specified in articles 5, 6, 7 and 8 thereof, particularly concerning the handing over of the said person to the judicial authorities for prosecution in accordance with the conditions and procedures for extradition as laid down in the provisions of national legislation and the Convention in the manner to which reference has already been made.

54. If the person alleged to have committed any of the offences referred to in article 4 is extraditable, the State exercising legal jurisdiction over the said person has an obligation to provide assistance in regard to the criminal proceedings that are brought, including the supply of all the evidence at its disposal which is necessary for the proceedings. It is only natural that these obligations should be fulfilled in the light of any existing treaties between the two States concerning mutual judicial assistance.

55. In the light of the above, it can be said that articles 5, 6, 7, 8 and 9 of the Convention have their counterparts in articles 4, 5, 6, 8 and 9 of the Libyan Penal Code, which contain corresponding provisions concerning the cases dealt with in the two sources.

Article 11

56. The corresponding provisions in Libyan law are as follows.

Article 24 of the Code of Criminal Procedure

57. This article specifies the circumstances in which a suspect who is present can be arrested. These circumstances are confined to felonies, cases of flagrante delicto, cases in which the offence constitutes a misdemeanour punishable by imprisonment and in which the suspect is placed under police surveillance, etc., misdemeanours involving theft, aggravated assault, resisting the authorities with force or violence, pimping and trafficking in women and children, etc. In each of these cases, the law stipulates that there must be adequate evidence of the commission of the offence.

Article 26 of the Code of Criminal Procedure

58. With regard to the hearing of the statements of the arrested suspect, this Code stipulates as follows:

> "The criminal investigation officer must immediately hear the statements of the arrested suspect and, if the latter is unable to exculpate himself, must refer him to the Department of Public Prosecutions within 24 hours.
>
> The Department of Public Prosecutions must question the suspect referred to it within 24 hours and must then order his retention in custody or his release".

Article 30 of the Code of Criminal Procedure

59. This article, which concerns the legality of arrest, stipulates:

> "No one may be arrested or detained except by order of the legally competent authorities".

Article 31 of the Code of Criminal Procedure

60. This article stipulates as follows:

> "Places of detention shall consist solely in the prisons intended for that purpose".
>
> "No prison warden shall admit any person thereto without an arrest warrant signed by the competent authority, nor shall he retain the said person therein beyond the specified time-limit".

Article 32 of the same Code, concerning authority to visit and inspect prisons

61. This authority is vested in members of the Department of Public Prosecutions, inspecting magistrates and the presidents and vice-presidents of courts of first instance and appeal courts in their respective areas of jurisdiction. Their role in this regard is as follows:

(a) To ensure that no one is imprisoned unlawfully;

(b) They have the right to inspect the prison registers and make copies thereof;

(c) They have the right to contact any prisoner and hear any of his complaints.

The governor of the prison and his staff must render every assistance to enable them to obtain the information that they require.

Article 33 of the same Code

62. This article refers specifically to the complaints of prisoners and persons who are detained unlawfully. Its main provisions are as follows:

(a) Every prisoner has the right to submit a written or verbal complaint, at any time, to the governor of the prison and to request him to transmit it to the Department of Public Prosecutions or the competent magistrate. The governor is legally bound to accept and promptly transmit such complaints after entering them in the register maintained to that end.

(b) Anyone who comes to know that a person is imprisoned unlawfully or in a place other than a legally designated prison must notify a member of the Department of Public Prosecutions or the competent magistrate.

(c) The member of the Department of Public Prosecutions or the competent magistrate must proceed to investigate the complaint and, after investigating it, must release the illegally confined person and draw up a report concerning the matter.

Article 14 of the Promotion of Freedom Act

63. This article stipulates that no person may be searched, interrogated or subjected to any deprivation or restriction of liberty except by order of a competent authority and in the circumstances and for the periods prescribed by law if he is accused of the commission of a legally punishable offence. Under the terms of this article, a person may be held in preventive detention only at a location of which his family is notified and for the shortest period of time needed for the investigation and for the preservation of evidence.

64. In general, these provisions provide guarantees in regard to the following:

(a) Cases in which the suspect can be arrested if there is adequate evidence of his commission of a felony, a misdemeanour punishable by imprisonment or offences involving violent assault on public officials, pimping and trafficking in women and children, etc. (art. 24).

(b) The legality of arrests, which can be made only by order of the competent authorities. It is prohibited for the warden of a prison to admit any person thereto without an order signed by the competent authority.

(c) The visiting and inspection of prisons, exercise of judicial supervision thereof and determination of the legality of the confinement of prisoners therein are systematically reviewed in the manner provided for in article 11 of the Convention.

(d) Everyone has an obligation to notify the Department of Public Prosecutions or the competent magistrate if he comes to know that a person is detained unlawfully or in a place that is not intended for such detention.

(e) Article 19 of the Promotion of Freedom Act regulates arrest and detention orders, in regard to which it refers to the circumstances and time-limits specified in other legislative enactments. These matters are naturally subject to the general rules laid down in the legislative provisions to which reference has already been made.

65. On the basis of this set of provisions, it can be said that Libyan legislation lays down general rules that regulate interrogation, examination, arrest, detention and custody and make these methods and the manner in which they are applied subject to systematic review, as required by article 11 of the Convention.

Articles 12 and 13

66. Articles 12 and 13 of the Convention have their counterparts in the following provisions of Libyan legislation:

(a) Article 435 of the Penal Code, which designates acts of torture as punishable criminal offences, as already indicated.

(b) Article 15 of the Code of Criminal Procedure, which stipulates that: "Anyone who comes to know of the commission of an offence in respect of which the Department of Public Prosecutions can institute proceedings without a complaint or a petition must notify the Department of Public Prosecutions or a criminal investigation officer thereof".

(c) Article 16 of the same Code, which contains examples of the notification-related obligations of public officials and persons assimilated thereto.

67. The following conclusions can be drawn from those provisions:

(a) Every act of torture is legally designated as a punishable criminal offence.

(b) The right to lodge a complaint is vested in the person against whom the act of torture is committed and may be exercised in the manner specified and regulated by law.

(c) By law, any citizen who comes to know of the commission of a criminal act of torture has an absolute right to lodge a complaint in that regard with the public authorities.

(d) By law, public officials and, in particular, physicians treating cases of injury or torture are required to notify the competent bodies, namely the Department of Public Prosecutions or criminal investigation officers, thereof.

Article 14

68. Articles 166 and 167 of the Civil Code contain the following provisions concerning compensation in respect of damage suffered:

(a) Article 166 stipulates that: "Any fault that causes damage to another person renders its perpetrator liable to payment of compensation in respect thereof".

(b) Under article 167: "A person is liable for his illegal acts if they are committed while he is capable of distinguishing right from wrong".

69. These provisions are fully applicable to the infliction of damage or the commission of an illegal act, regardless of whether its perpetrator is a public or private body, an ordinary individual or a public official. They are all liable for their illegal acts and, in accordance with the provisions of the Libyan Penal Code and the Convention against Torture, the commission of torture is an illegal act and, as such, is designated as a punishable criminal offence that creates an entitlement to compensation in respect of the damage resulting therefrom. The victim can follow one of two procedures to lodge a complaint and claim compensation in respect of such damage. He can either bring an independent action before the civil courts or claim compensation before the criminal courts while they are hearing the criminal proceedings. The latter is the more usual procedure in view of the interlinkage between the criminal and civil aspects of the judgement and the rapid manner in which it can be handed down and implemented.

Article 15

70. This article concerns what can be called "legal safeguards" provided by the national courts. The most prominent aspect is the need to refrain from relying on evidence or statements obtained through coercion.

71. In this connection, the case-law applied by the Supreme Court is as follows:

(a) No evidence or probative confessions or statements of any type whatsoever are admissible if obtained through coercion, regardless of the value of such evidence (ruling of the Supreme Court in Criminal Appeal SC/26/354).

(b) The judge hearing the case must examine and verify the arguments put forward by the accused concerning the probative value of any confession attributed to him and concerning the use of violence or coercion to obtain such confession. If the judge fails to do so, his judgement will be vitiated and lacking in substantiation and must be quashed (Criminal Appeal SC/98/42).

72. The Supreme Court is the highest judicial authority in the national legal system and its rulings are binding on all the courts. The principles that it establishes constitute rules by which the judiciary must abide in its judgements.

Article 16

73. Article 16 has its counterpart in the following articles of the Libyan Penal Code.

74. Article 431 prescribes a punishment of imprisonment and a fine for any public official who, in the discharge of his duty, uses violence against any person in such a way as to detract from his dignity or cause him physical pain.

75. Article 428 prescribes a penalty of imprisonment ranging from six months to five years for anyone who deprives any individual of his personal liberty. The penalty is increased by half if the act is committed by a public official exceeding the limits of his official authority.

76. Article 429 prescribes a penalty of imprisonment or a fine for anyone who, through the use of violence or threats, compels a person to perform, suffer or refrain from engaging in an act, etc.

77. These provisions of articles 431, 428 and 429 of the Libyan Penal Code refer to legally punishable acts similar to those referred to in article 16 of the Convention. Other acts not amounting to torture as defined in article 1 of the Convention are also covered by these provisions. For example:

(a) Abuse of authority in such a way as to detract from a person's dignity or cause him physical pain is prohibited by law and punishable under the terms of article 431 of the Penal Code.

(b) Unlawful detention is punishable by imprisonment under the terms of article 428 of the Penal Code.

(c) The use of violence to coerce others constitutes a criminal offence punishable by the penalty prescribed in article 429 of the Penal Code.

78. The penalty prescribed in all these provisions of the Penal Code is increased if the act is perpetrated by a public official exceeding the limits of his official authority or if such official commits an act that degrades or causes physical pain to any individual.

79. In our view, this trend in Libyan legislation tends to deter abuses by the Administration and curbs the misuse of public authority. Moreover, these acts, which are designated as criminal offences in the Libyan Penal Code, are incorporated in the chapter entitled "Offences against personal liberty" in order to highlight the importance that Libyan law attaches to the protection of public freedoms.

Conclusion

80. In concluding this report, we hope that the distinguished Committee will permit us to express the view that human endeavours, on the part of individuals, groups, States, Governments and international organizations, etc., should focus on promoting the sacred values of truth, justice and freedom, upholding the rights of peoples to those values and consolidating the political, economic, social and cultural aspects of human rights in a world in which mankind must share the benefits of technological development and scientific progress in such a way as to eliminate racial, cultural and religious divisions and leave no cause for allegations of intolerance, isolation or segregation between peoples and nations.

81. Throughout the history of mankind, the human person has been the precious target of religions, divinely-revealed missions and revolutionary reforms. In this world, everyone has a right to live in freedom and to think, create, produce and progress in freedom, security and peace.

82. These concepts apply to individuals as well as nations and peoples and those who encroach on human freedom within States and regimes do not differ from those who encroach on the freedoms of peoples and nations by means of embargoes, isolation, external loan and debt policies, tendentious and conditional aid programmes and the imposition of a single criterion to judge the experiences of others on the pretext that one has the best concepts and the most viable solutions to the problems of human beings wherever they may be.

83. The first category are just as much at fault as the second category, since they both act on the erroneous assumption that individuals are minors in need of someone to think and plan on their behalf and that the peoples of the world, not having reached the age of maturity, need someone to supervise every step that they take and to control even their levels of growth and development. In the same way as ignorance disappears as knowledge becomes more widespread, violations of human rights and freedom disappear when human beings enjoy liberty and control over their destiny and when peoples take their place in decision-making forums and participate effectively in the process of shaping their future.

84. Regardless of the extent of the legal and judicial safeguards that might be provided by a particular political or judicial system for the protection of human rights and freedom, there will inevitably be individual violations of the rules of law and encroachments by administrations or States on the rights and public freedoms of persons.

85. This is a basic problem in the mutual relationship between individuals and authorities. It is reflected in the ontology of modern States which manifest no inclination to justify violations of the values of freedom and human rights. In the words of Martin Luther, the religious reformer: "The just prince is a rare bird". In this sense, the concept of the ideal individual in the ideal society in the ideal State is a form of diligent quest for an earthly Utopia which, although human endeavours might approach it step-by-step, remains unattainable and beyond reach since it is part of the dream of philosophers and intellectuals. However, regardless of the magnitude of the difficulties and challenges which mankind must face in its daily life, dreams can move mountains and create part of the truth. The truth is human freedom.

86. We hope that the substantive content of this report will serve the purpose that the Committee is seeking to achieve in its work. God is the judge of our good intentions.